

## TECHNICAL ASSISTANCE – ATTENDANCE AT PARTNERSHIP MEETINGS

Prepared by the Division of Human Resources in the Department of Personnel & Administration. April 7, 2009.

The Governor issued Executive Order D 028 07 on November 2, 2007, authorizing partnership agreements with state employees. The intent of the order is to establish employee-management cooperation in “jointly crafting workplace goals and expectations” intended to “produce better, more cost-effective...services, and a healthier work environment”. The purpose of the Executive Order is to establish the framework for employee partnerships to discuss “issues of mutual concern to the employees and the State”. Covered employees<sup>1</sup> in the state personnel system selected COWINS and the Association of Colorado State Patrol Professional (ACSPP) as the two certified employee organizations to represent them. Under the Executive Order, partnership agreements can be within a department, an occupational group, or statewide. It is important to note that occupational group and statewide agreements impact all covered employees in that group or in the state personnel system regardless of the department or higher education institution (hereafter departments) in which employed and whether a departmental agreement exists. The following guidance addresses time for elected employee representatives of COWINS and ACSPP to attend official partnership meetings with management.

Under the Fair Labor Standards Act (FLSA), the State is considered a single employer so departments must ensure consistent application in how time is treated for purposes of compliance, including overtime for any elected employee representatives who are non-exempt. In accordance with 29 CFR 785.27 of the FLSA, attendance at lectures, meetings, training programs and similar activities are not considered work time<sup>2</sup> if the following four criteria are met: 1) attendance is outside of the employee’s regular working hours; 2) attendance is in fact voluntary; 3) the course, lecture or meeting is not directly related to the employees job; and 4) the employee does not perform any productive work during such time. Interpretations of 29 CFR 785.42 related to hours worked and compensation provides examples, one of which is, “labor-management committee meetings on daily operations”<sup>3</sup>. The Governor’s Executive Order is clear that the intent is to discuss matters of mutual concern to employees and management and collaborate on strategies and decisions to achieve goals. These discussions or “committee meetings” take place through official partnership meetings with management.

Based on the requirements of FLSA and the intent of the Executive Order to improve the delivery of government services, official partnership meetings with management are directly related to an elected employee representative’s job, are not typically held outside an elected employee representative’s regularly scheduled work hours, and the discussions are to improve services and work conditions, which is considered “productive work”. Therefore, the four tenets established by the FLSA cannot be met and the time spent attending official partnership meetings with management is considered work time when advance permission has been sought and granted by the appointing authority.

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<sup>1</sup> Covered employee is an employee in the state personnel system unless falling into one of the categories listed in the Executive Order or otherwise excluded by the Governor’s Designee in the Governor’s Office.

<sup>2</sup> Work time or work hours are any time an employee is suffered or permitted to work even when the work was not requested.

<sup>3</sup> *Fair Labor Standards Handbook*, Thompson Publishing Group, Inc.

These official partnership meetings with management, **where advance permission is sought and granted**, are to be treated as work time. In addition, where participation has been approved, departments must be cognizant of non-exempt elected employee representatives' work hours in order to manage any overtime liability. This includes travel time to and from the principal worksite to these official partnership meetings with management. Normal commute time is not considered work time. However, where travel during a normal commute time is longer than usual; departments have the discretion to count part of that time as work time. For example, if an employee's normal commute is within the Denver Metro area, and the official partnership meeting is taking place in Fort Collins, the non-exempt elected employee representative's department may count the time outside the normal commute as work time.

Elected employee representatives of the two certified employee organizations must seek approval and have permission from their appointing authorities prior to attending official partnership meetings with management. This permission must be requested as far in advance as possible (at least two weeks in advance). Employees may be required to provide documentation that verifies the date, time, and location of such official partnership meetings prior to the meeting. Departments or appointing authorities may also verify the official partnership meeting with the Governor's Designee.

Appointing authorities have the discretion to grant an elected employee representative's request taking into account workload and staffing issues. Appointing authorities are expected to grant the time for an elected employee representative to attend, provided it will not unduly disrupt normal business. For example, if a department has more than one representative in a division or unit and granting the time for all elected employee representatives would require closing the office or substantially reducing services, only one elected employee representative may be granted permission. If an elected employee representative does not request permission in advance to attend official partnership meetings with management, the appointing authority needs to follow normal established department procedures like any other meeting or training.

For record keeping purposes, departments may want to establish a means to record an elected employee representative's time spent attending official partnership meetings with management, (e.g., spreadsheet for partnership time or an additional code in the existing time keeping system).

Any employee, whether an elected employee representative or not, may want to participate in meetings sponsored by employee organizations, such as membership, internal employee organization affairs, or general informational meetings. In these circumstances, employees are expected to use annual leave, subject to Director's Rules and department procedures for requesting leave, or attend during non-work time (e.g., lunch, after hours).

Every attempt is made to keep this information updated. For additional information, refer to Executive Order D 028 07 or contact your department human resources office. Subsequent revisions to the Executive Order could cause conflicts in this information. In such a situation, the Executive Order is the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.

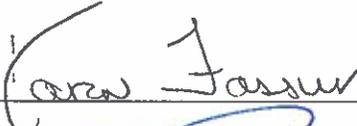
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Technical Guide Topic: Attendance at Partnership Meetings

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